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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. RANDY ERIC FULLER, Defendant and Appellant.	E033373 (Super.Ct.No. RIF 101296) OPINION

APPEAL from the Superior Court of Riverside County. Russell F. Schooling, Judge. (Retired judge of the Los Angeles Municipal Court, Southeast District, assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Sharon L. Rhodes and Annie Featherman Fraser, Deputy Attorneys General, for Plaintiff and Respondent.

1. Introduction

A jury convicted defendant of robbery,[1] assault,[2] felony evasion of a peace officer,[3] and driving without a valid driver's license.[4] The trial court found true the allegations of two prior felony convictions in Nevada. The trial court sentenced defendant to 60 years to life in prison under California's Three Strikes Law.

On appeal, defendant contends the Nevada convictions do not qualify as strikes and the sentence on the third count should have been stayed because the sentence of two consecutive 25 year terms violates section 654. We reject these contentions and affirm the judgment.

2. Facts

At 3:00 a.m., defendant accosted Donald Cooper, a truck driver, in the restroom of a diesel fueling station. The two men struggled. Defendant grabbed Cooper's wallet and cell phone and fled.

A few minutes later a Riverside police officer stopped defendant, who was driving a red Datsun without registration tags or an illuminated license plate. Suddenly, the Datsun pulled away, made a U-turn, hit the curb, and almost hit the rear bumper of the

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[1] Penal Code section 211. Unless otherwise stated, all statutory references are to the Penal Code.

[2] Section 241, subdivision (b).

[3] Vehicle Code section 2800.2.

[4] Vehicle Code section 12500, subdivision (a).

[footnote continued on next page]

police car. The Datsun hit the curb again, then backed up and rammed the front passenger side of the police car. Next, the Datsun straightened out and proceeded north with the police car in pursuit.

During the pursuit, items were thrown out the Datsun's driver's window. The Datsun traveled the wrong way on a freeway offramp, toward oncoming traffic, at which point the pursuit ceased for safety reasons. The police found Cooper's wallet in the road.

Several hours later the police located the Datsun parked outside defendant's Fontana home. When defendant answered the door, the police arrested him. Cooper identified defendant. Cooper's cell phone was found in defendant's trash.

In a police interview, defendant said he had used cocaine and "scuffled" with a man in a restroom, acquiring the man's cell phone. Defendant remembered being stopped by the police but not hitting the police car or the pursuit.

3. The Nevada Convictions

In 1985, defendant pleaded guilty in Nevada to attempted robbery involving money. In 1994, he pleaded guilty to robbery involving a wallet and its contents. The record also shows defendant has a criminal record of multiple offenses between 1985 and the present offense in 2001. Defendant argues substantial evidence does not support the

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[footnote continued from previous page]

trial court's determination that the Nevada convictions constituted "strikes" under California law because the elements of robbery in California and Nevada do not match.[5]

In the 1985 crime, the amended information charged that defendant did "wilfully, unlawfully and feloniously attempt to take personal property, to-wit: lawful money of the United States, from the person of WILLIE EARL ROBINS, or in his presence, by means of force or violence or fear of injury to, and without the consent and against the will of the said WILLIE EARL ROBINS."

In the 1994 crime, the amended information similarly charged that defendant did "wilfully, unlawfully and feloniously take personal property, to-wit: wallet and contents, from the person of JERRY D. WILSON, or in his presence, by means of force or violence, or fear of injury to, and without the consent and against the will of the said JERRY D. WILSON."

Defendant argues that robbery in Nevada is different than robbery in California. Nevada law defines robbery as follows: "Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. A taking is by means of force or fear if force or fear is used to:

"(a) Obtain or retain possession of the property;

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[5] *People v. Crowson* (1983) 33 Cal.3d 623, 632.

"(b) Prevent or overcome resistance to the taking; or

"(c) Facilitate escape.

"The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property. A taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear."[6]

California defines robbery as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear."[7] California case law holds the "felonious taking" requires the intent to deprive permanently.[8]

Defendant maintains the scant records used to prove the two Nevada convictions do not contain enough information to allow the trial court to conclude the Nevada crimes would have qualified as robberies under California law. We disagree.

In *People v. Mumm*,[9] Division One of the Court of Appeal, Fourth Appellate District held: ". . . Arizona's robbery statute satisfies the intent requirement of theft under California's robbery statute. Both statutes require an intent to deprive the owner of

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[6] Nevada Revised Statutes, section 200.380.

[7] Section 211.

[8] *People v. Ford* (1964) 60 Cal.2d 772, 793.

[9] *People v. Mumm* (2002) 98 Cal.App.4th 812.

possession of his or her property either permanently or for an unreasonable length of time, or an intent to deal with the owner's property in such a way that there is a substantial risk of permanent loss. Because Mumm had the intent to commit robbery as defined under California law, his prior Arizona robbery conviction was a serious felony and a strike for purposes of the three strikes law."[10] Here too defendant certainly can be said to have intended to deprive his victims of their money permanently, making his Nevada robbery convictions strikes for purposes of California law.

As both parties acknowledge, the court can "go behind the least adjudicated elements of the crimes to prove that they would have been [robberies] in California as defendant actually committed them."[11] In the present case, the fact that defendant stole money and a wallet and its contents affords substantial evidence that he had the intent to deprive the victims permanently of these items. Money cannot be used and returned like a stolen car. Instead, money is consumed like liquor or similar disposable items.[12]

Furthermore, it is reasonable to infer that, when money is taken by force or fear, it is not, as suggested by defendant, the legitimate recoupment of a gambling debt[13] or a

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[10] *People v. Mumm, supra,* 98 Cal.App.4th at pages 818-819.

[11] *People v. Riel* (2000) 22 Cal.4th 1153, 1204.

[12] *People v. Riel, supra,* 22 Cal.4th at page 1206.

[13] *People v. Rosen* (1938) 11 Cal.2d 147.

good faith claim of right.[14] For example, in *People v. McGee*,[15] McGee pleaded guilty to two robberies in Nevada in 1988 and 1994. In the first instance he threatened another teenager and took $2 from him. In the second instance, McGee asked the victim for money and, when the victim refused, McGee struck him, at which point the victim handed over his wallet, containing $120, and a Walkman. Based on that record, the court said there was no room for doubt that the elements of California's robbery statute were satisfied by both crimes. Here, where defendant admitted to committing robbery of money by force or fear, the Nevada robberies qualify as California strikes.

4. Section 654

Defendant's second argument on appeal is that the court should have stayed the second 25-years-to-life sentence imposed for count 3, evading the police. As stated in *People v. Saffle*:[16] "Section 654 applies when there is a course of conduct which violates more than one statute but constitutes an indivisible transaction. [Citation.] The purpose of section 654 is to ensure that a defendant's punishment will be commensurate with his culpability. [Citation.] Whether a course of criminal conduct is a divisible transaction which could be punished under more than one statute within the meaning of section 654 depends on the intent and objective of the actor. [Citation.]"

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[14] *People v. Tufunga* (1999) 21 Cal.4th 935, 945-956.

[15] *People v. McGee* (2004) 115 Cal.App.4th 819, 836.

[16] *People v. Saffle* (1992) 4 Cal.App.4th 434, 438.

Here defendant contends he was in the process of escaping to a place of temporary safety and, therefore, his evasion of the police was an indivisible part of the robbery.[17] He also contends evading the police is "arguably" a victimless crime, not a separate act of violence against a different victim[18] or a gratuitous act of violence.[19]

We are not persuaded. First, defendant's two crimes did not form an indivisible transaction against a single victim as in the cases relied upon by him. The robbery already had been completed when the police fortuitously stopped defendant for equipment violations. Next, employing a deferential standard of review,[20] we agree with the trial court's factual determination that both the police officer and the public were endangered by defendant's conduct, making his crime one against a different victim than the robbery victim. In addition, his erratic and dangerous driving including using his car as a weapon against the officer, constituted gratuitous violence. Unlike the defendants in *People v. Garcia*[21] and *Wilkoff v. Superior Court,*[22] the present defendant committed an

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[17] *People v. Carroll* (1970) 1 Cal.3d 581, 585; *People v. Laursen* (1972) 8 Cal.3d 192, 199-200; *People v. Green* (1979) 95 Cal.App.3d 991, 997-998, 1008.

[18] *People v. Bauer* (1969) 1 Cal.3d 368, 377.

[19] *People v. Nguyen* (1988) 204 Cal.App.3d 181, 189-193.

[20] *People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312-1314; *People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.

[21] *People v. Garcia* (2003) 107 Cal.App.4th 1159, 1162-1163.

[22] *Wilkoff* (1985) 38 Cal.3d 345, 351.

act of violence against a person. Section 654 does not apply to violent, gratuitous separate crimes against multiple victims.[23] It does not apply here.

5. Disposition

We affirm the judgment.

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s/Gaut
J.

We concur:

s/Hollenhorst
Acting P. J.

s/Richli
J.

[23] *People v. Solis* (2001) 90 Cal.App.4th 1002, 1023.